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ATTORNEY FOR PLAINTIFF, SUNBELT RENTALS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SUNBELT RENTALS, INC., a/k/a SUNBELT  
RENTALS – REGION 8,

Plaintiff,

v.

T.B. PENICK AND SONS, INC., WP WEST  
BUILDERS CALIFORNIA L.P., and RLI  
INSURANCE COMPANY,

Defendants.

Case No. 4:20-cv-04039-YGR

**AMENDED COMPLAINT**

Date: July 21, 2020

Judge: Yvonne Gonzalez Rogers

Plaintiff, Sunbelt Rentals, Inc., a/k/a Sunbelt Rentals – Region 8 (“Sunbelt”) files this amended complaint under Federal Rule of Civil Procedure 15(a)(1)(B) against T.B. Penick and Sons, Inc. (“TB Penick”), WP West Builders California L.P. (“West Builders”), and RLI Insurance Company (“RLI”).

**Parties**

1. Plaintiff Sunbelt is a corporation formed under the laws of North Carolina. Its principal place of business is in South Carolina.

2. Defendant TB Penick is a corporation formed under the laws of California. Its principal place of business is in California.



1           14.     The Rental Contract was incorporated into the invoices, and one such invoice,  
2     digitally signed by Craig Martin on behalf of TB Penick, is attached as Exhibit 2 as an exemplar.

3           15.     Unpaid invoices (the “Invoices”) reflecting the Equipment TB Penick rented from  
4     Sunbelt and the associated rental fees are attached as Exhibit 3.

5           16.     An account summary that includes the amounts of all of the Invoices is attached  
6     as Exhibit 4.

7           17.     Exhibit 4 reflects that as of March 6, 2020, the total unpaid principal amount of  
8     the Invoices is \$275,438.37 (the “Principal Amount”).

9           18.     The Rental Contract provides for a service charge that accrues at a rate of 1.5%  
10    per month on the balance of delinquent invoices until the invoices are fully paid. *See*  
11    Exhibit 1, § 12.

12          19.     The Rental Contract provides that Sunbelt can recover from TB Penick its  
13    reasonable attorneys’ fees and costs incurred in efforts to collect amounts TB Penick owes  
14    Sunbelt. *See* Exhibit 1, § 15.

15          20.     Upon information and belief, TB Penick was the general contractor on the Project.

16          21.     TB Penick did not fully pay Sunbelt for the use of the Equipment that Sunbelt  
17    rented to TB Penick.

18          22.     In accordance with Cal. Civ. Code § 8200, Sunbelt timely gave preliminary notice  
19    to the Project owners, a copy of which is attached as Exhibit 5.

20          23.     On April 7, 2020, Sunbelt filed a lien (the “Lien,” attached as Exhibit 6) in the  
21    amount of \$275,360.40 (the “Lien Amount”) in San Francisco County, California.

22          24.     A copy of the Lien was timely served on the Project owners pursuant to Cal. Civ.  
23    Code § 8416.

24          25.     All conditions precedent for the perfection of Sunbelt’s Lien on the Project and  
25    Property and enforcement of the Lien were satisfied.

26          26.     Thereafter, West Builders, as principal, with RLI as the surety, filed a Mechanic’s  
27    Lien Release Bond on April 24, 2020 (the “Bond”) releasing the real property from the Lien and  
28

1 guaranteeing the payment of the sum of the Lien upon a successful lien enforcement action. A  
2 copy of the Bond is attached as Exhibit 7.

3 **Claim 1 – Breach of Contract**

4 27. Sunbelt incorporates the previous allegations presented in this Amended  
5 Complaint.

6 28. The Rental Contract and the Invoices constitute the contract between Sunbelt and  
7 TB Penick.

8 29. Under the terms of the contract, TB Penick agreed to pay Sunbelt for rental of the  
9 Equipment.

10 30. TB Penick breached that contract by not fully paying Sunbelt for its rental of the  
11 Equipment.

12 31. Sunbelt suffered damages because of TB Penick's breach of contract.

13 **Claim 2 – Lien Enforcement Against Bond**

14 32. Sunbelt incorporates the previous allegations contained in this Amended  
15 Complaint.

16 33. Sunbelt has a valid lien on the Property to secure payment for the Equipment it  
17 rented to TB Penick to be used in connection with the Project.

18 34. Under California Civil Code § 8424, West Builders and RLI recorded the Bond in  
19 the amount of \$344,200.50 to pay any judgment Sunbelt receives against the Property.

20 35. Sunbelt has fulfilled all requirements to enforce the Lien against the Bond.

21 36. Sunbelt is entitled to a judgment against West Builders and RLI, as principal and  
22 surety on the Bond, for all legal amounts Sunbelt is entitled to recover based on its rights under  
23 the Bond and Lien.

24 **Demand for Relief**

25 ACCORDINGLY, Sunbelt respectfully requests that the Court enter a judgment in  
26 Sunbelt's favor and against the Defendants granting the following relief:

- 27 i. declaring that the Lien was properly perfected and making West  
28 Builders and RLI, as principal and surety on the Bond, jointly and

severally liable to Sunbelt for all legal amounts Sunbelt is entitled to recover based on its rights under the Bond and Lien;

ii. making T.B. Penick liable to Sunbelt for the following:

- the Principal Amount,
- service charges that have accrued and that will continue to accrue until the Principal Amount is fully paid,
- all other damages Sunbelt has suffered,
- Sunbelt's reasonable and necessary attorneys' fees and costs,
- prejudgment interest,
- post-judgment interest, and
- any other relief that the Court deems appropriate.

Dated: July 21, 2020

Respectfully submitted,

SUNBELT RENTALS, INC.

By: /s/ Tara L. Blake  
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